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Supreme Court, U.S.
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No. 00-6374

In The Supreme Court Of The United States

DALE G. BECKER,
Petitioner,

v.

BETTY MONTGOMERY, et al.,
Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS (SUPPORTING PETITIONER)

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BEST AVAILABLE COPY

QUESTION PRESENTED

When a party files a timely notice of appeal in district court, does the failure to sign the notice of appeal require the court of appeals to dismiss the appeal?

PARTIES

The Petitioner is Dale G. Becker, an Ohio prison inmate.

The Respondents are the Attorney General of Ohio (Betty Montgomery); various Ohio prison inspectors, prison wardens and prison administrators (Mal Payne, Kay Carneine, L.C. Coval, Ernie Moore, Fred McAninch, Gary Mohr, Michael Randall, Bobbie McKeever, Danny Pfeifer, Kenneth Ebetts); and Ohio's former Governor (George V. Voinovich).

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The order of the court of appeals, Joint Appendix (J.A.) 16-17, is unreported. The opinion of the district court, J.A. 4-9, is unreported.

JURISDICTION

The court of appeals entered its judgment on May 12, 2000. A petition for rehearing was denied on July 14, 2000. J.A. 18. The petition for a writ of certiorari was filed on September 25, 2000, and was granted on January 8, 2001.

J.A. 19. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

FEDERAL RULES INVOLVED

Relevant provisions of Rule 11 of the Federal Rules of Civil Procedure provide:

> (a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. . . . An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

The complete text of the rule is reproduced in an appendix to this brief at 1a-4a.

Rule 1 of the Federal Rules of Civil Procedure is likewise reproduced in the appendix to this brief at 1a, Rule 3 of the Federal Rules of Appellate Procedure is reproduced at 4a-6a, and Rule 4 of the Federal Rules of Appellate Procedure is reproduced at 7a-12a.

STATEMENT

Petitioner Dale G. Becker, an inmate at the Chillicothe Correctional Institution in Ohio, filed suit under 42 U.S.C. 1983 against the respondent state officials in August 1999, alleging that they had intentionally exposed him to secondhand cigarette smoke during his confinement at the prison. He sought compensatory and punitive damages, as well as equitable remedies, including the implementation of new procedures for separating smokers from non-smokers in the State's correctional facilities.

When Becker's *pro se* complaint arrived at the district court in Columbus, Ohio, the court followed the procedure spelled out in 28 U.S.C. 1915A(a), which directs the district courts to "review, before docketing, . . . a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee." That same statute permits the district courts to dismiss such a complaint if it is "frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. 1915A(b)(1).

During that initial screening process, the district court concluded that Becker's complaint did indeed fail to state a claim upon which relief could be granted, as it did not indicate the date or dates on which Becker had allegedly been exposed to secondhand smoke, and did not allege with any particularity the intentional conduct of the various defendants that might have led to the injuries Becker claimed. Also, according to the district court, Becker had failed to show that he had exhausted his prison administrative remedies for redressing his concerns, as 42 U.S.C. 1997e(a) requires ("No action shall be brought with respect to prison conditions under section 1983 . . . by a prisoner confined in any . . . prison . . . until such administrative remedies as are available are exhausted.").

The district court dismissed Becker's complaint in a written order and judgment entry filed on August 27, 1999. J.A. 4-9, 10-11.

Becker then filed a timely notice of appeal in the district court 24 days later. As with his complaint, he filed the notice of appeal *pro se*. He used a Government Printing Office form for notices of appeal, filling in the blank lines as required with typewritten information about the parties' names, the district court case number, and his address. J.A. 12. His typewritten information on the notice of appeal

indicates that Becker intended to appeal the district court's August 27, 1999 judgment.

On the form's blank line beneath which appear the words "Counsel for Appellant" in parentheses, Becker typed his name: Dale G. Becker. The GPO form that Becker used does not mention signatures or a signature requirement, and Becker did not sign the one-page notice that he filed with the district court.

The district court's docket shows that the clerk there received and filed Becker's unsigned notice of appeal on September 20, 1999, and, as Fed. R. App. P. 3(d)(1) directs, the clerk sent a copy of it to the court of appeals the next day. The court of appeals assigned a case number to Becker's appeal, and set a briefing schedule for the parties. J.A. 13-15. Neither the district court nor the court of appeals then questioned the validity of Becker's unsigned notice of appeal, and defendants' counsel did not do so either.

Becker then filed his *pro se* appellant's brief with the court of appeals, and did so more than two weeks earlier than the deadline set by the court. He signed that typewritten brief both on the cover and on the last page. The defendants chose not to file an appellees' brief, and the case was then ready for a decision from the court of appeals on the merits of Becker's challenge to the district court's dismissal of his complaint.

On May 12, 2000 – more than seven months after Becker had filed his timely but unsigned notice of appeal in the district court, and more than six months after Becker had filed his timely and signed appellate brief with the court of appeals – that latter court issued a brief order describing the notice of appeal as "defective because it was not signed by the pro se appellant or by a qualified attorney." J.A. 16-17. According to the court of appeals, the court "lack[ed] jurisdiction over this appeal," and so the court dismissed

Becker's case on that date without addressing the merits of his appeal. The court of appeals did not give Becker an opportunity to correct the notice of appeal, and the May 12th order marked the first time that the lack of a signature on the notice had been raised as an issue in the case.

Becker filed a timely motion for reconsideration in the court of appeals asking that court to reconsider its order and accept his new, signed notice of appeal – which he attached – but the court of appeals denied that motion several weeks later. J.A. 18.

Becker then filed a timely *pro se* petition for certiorari. Because the respondent state officials on whose behalf this brief is filed agreed with Becker that his intent to appeal was clear from his unsigned notice, and agreed with him that the court of appeals should not have dismissed his appeal without giving him an opportunity to correct the lack of a signature on his notice of appeal, we urged the Court to grant the petition and vacate the judgment below.

On January 8, 2001, the Court granted certiorari to review the appellate court's conclusion that an appellant's failure to sign a notice of appeal bars the court of appeals from hearing his case. Respondents now join Becker in urging the Court to reverse the appellate court's judgment. The Court has invited Stewart A. Baker to brief and argue this case as *amicus curiae* in support of the judgment below.

SUMMARY OF ARGUMENT

Rule 11 of the Federal Rules of Civil Procedure requires that every "pleading, written motion, and other paper" filed in the federal district courts "be signed" by an attorney, or by the party if he or she is not represented by an attorney. And the rule directs that any unsigned document "shall be stricken unless omission of the signature is

corrected promptly after being called to the attention of the attorney or party." Fed. R. Civ. P. 11(a).

That critical opportunity for prompt correction of the missing signature on the notice of appeal in this case was not afforded by the court below to petitioner Becker. The significance of his omitted signature was "called to [his] attention," *id.*, only in the appellate court's dismissal entry – which the court issued more than seven months after Becker filed what the court of appeals described in that order as a "defective" notice, J.A. 16 – and the court then refused to reconsider when he asked for a chance to correct the alleged defect a few days later.

The appellate court's dismissal order is consistent neither with the current text of Rule 11 nor with the approach that courts in this country have long followed in enforcing signature-requirement rules for legal filings. Rule 11's signature requirement aims to discourage frivolous legal arguments and unfounded factual allegations, but the no-second-chances, automatic-dismissal approach that the court below imposed on the *pro se* litigant in this case furthers none of that rule's goals. The federal appellate and civil-procedure rules are not designed to trap the unwary (and unrepresented) litigant who tries earnestly to comply with them. Just as this Court has pointed in several previous cases to the built-in flexibility that the federal rules contain, so the Court ought to apply the words of Rule 11(a)'s signature requirement – and its critical opportunity for prompt correction – in a reasonable way here that holds true not only to the letter but also to the spirit of that and the other federal rules. And the fact that Rule 11's signature requirement has no counterpart in the federal criminal rules shows that the court below erred in treating signatures as a *sine qua non* of valid notices of appeal in the federal courts.

Our federal courts ought to be open to petitioner Becker as much as to any other litigant who seeks redress, and he has by all appearances made an honest effort to comply with rules that are supposed to be "construed and administered to secure the just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1. The approach followed by the court of appeals did not "secure the just . . . determination" of this case for petitioner Becker, who was entitled to be heard on his appellate claims, even if, in the end, those claims have no merit, as we believe. The judgment of the court of appeals should be reversed.

ARGUMENT

I. Though Notices Of Appeal In Some Civil Cases Should Be Signed, The Federal Rules Do Not Call For The Automatic Dismissal Of Unsigned Documents.

A. Federal Courts Have Never Treated The Absence Of A Signature On Legal Documents As A Jurisdictional Defect.

For most of this country's history, some court rules have called for parties or attorneys to sign particular legal documents. Yet no court rule has ever compelled any court to dismiss a case automatically for want of a signature, as happened in this case.

The importance of attorney signatures on American legal documents first drew comment in an 1838 treatise by Justice Story, who wrote that a lawyer's signature on equity pleadings stood for the "regularity, relevancy, and decency" of the filings. J. Story, Equity Pleadings, Ch. 11, § 47 (1838). Story traced the signature requirement to 16th-century England, where a legal counselor's signature vouched for the signed document's "good ground." *Id.*

A signature requirement was made part of Rule 24 of the Rules of Practice for the Courts of Equity in 1842, 42 U.S. (1 How.) xxxix, xlviii (1842), as well as the 1912 revision of that rule, 226 U.S. 627, 655 (1912), both of which required a lawyer to sign "[e]very bill" or other pleading, with any such signature considered an official certification that "good ground" existed for the claim raised in the document. Neither rule contained any enforcement mechanism or other penalty for non-signers, though, and those rules' signature requirements "never figured in the decision of a reported case or any proceeding against a lawyer from 1842 to 1938." D. Michael Risinger, Honesty in Pleading and Its Enforcement: Some "Striking" Problems with Federal Rule of Civil Procedure 11, 61 Minn. L. Rev. 1, 14 (1976).

In 1938, the Court implemented Fed. R. Civ. P. 11, and, right from the start, it contained both a signature requirement and an enforcement procedure that covered attorneys and non-attorneys alike. In relevant part, the rule said this:

> Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. . . . If a pleading is not signed or is signed with intent to defeat the purpose of the rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served.

Former Fed. R. Civ. P. 11, as promulgated at 308 U.S. 645, 676 (1938).

Despite the tough language, no reported cases during the rule's first several decades point to the dismissal of a case or an appeal for want of a signature, though some courts did allow lawyers to correct unsigned pleadings, or even overlooked the flaw entirely. See, e.g., *Holley Coal Co. v. Globe Indemnity Co.*, 186 F.2d 291, 295 (4th Cir. 1950) (affirming district court's discretion to allow an attorney to file a signed amended answer where – through "oversight" – the first answer was unsigned); *Burak v. Pennsylvania*, 339 F. Supp. 534, 535 n.2 (E.D. Pa. 1972) (describing the absence of a signature on the plaintiff's complaint as "a mere technical defect" that could be overlooked, "especially since none of the defendants has previously pointed to this violation of Rule 11 and alleged prejudice"); *In re Legon*, 85 F. Supp. 946, 947 (S.D.N.Y. 1949) (permitting a party to file amended pleadings where originals had not been signed by a lawyer, and explaining that "[a]lthough Rule 11 . . . requires all pleadings to be signed by counsel, it does not invalidate unsigned pleadings"); *Universal Labs., Inc. v. V. Vivaudou, Inc.*, 8 Fed. Rules Serv. 11.51, Case 1 (S.D.N.Y. 1944) (denying defendants' motion to strike an unsigned complaint where there was "no proof of willful failure or refusal and no prejudice could be claimed by the defendants if the plaintiffs were given leave to sign the pleading heretofore served").

B. Rule 11 Expressly Directs Courts To Give Parties And Lawyers An Opportunity To Correct Unsigned Documents.

In 1983 – the first time that the Court amended the Rule – language was added giving courts the very flexibility reflected in those earlier decisions:

> If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

Former Fed. R. Civ. P. 11, as promulgated at 97 F.R.D. 165, 167 (1983).

That same concept – though reworded in the latest round of changes to the rule in 1993 – remains part of Rule 11 today. Both attorneys and unrepresented parties are to sign all documents filed in the federal district courts in civil cases, and unsigned documents are to be stricken if not "corrected promptly after being called to the attention of the attorney or party." Fed. R. Civ. P. 11. The Advisory Committee Notes for the 1993 amendments to the rule explain the approach that courts should follow when unsigned documents are filed:

> Unsigned papers are to be received by the Clerk, but then are to be stricken if the omission of the signature is not corrected promptly after being called to the attention of the attorney or *pro se* litigant. Correction can be made by signing the paper on file or by submitting a duplicate that contains the signature. A court may require by local rule that papers contain additional identifying information regarding the parties or attorneys, such as telephone numbers to facilitate facsimile transmissions, though, as for omission of a signature, the paper should not be rejected for failure to provide such information.

Fed. R. Civ. P. 11 Advisory Committee's Notes, 28 U.S.C.A. (1993).

If, as the Court has said, "[w]e give the Federal Rules of Civil Procedure their plain meaning," *Pavelic & LeFlore v. Marvel Entertainment Group*, 493 U.S. 120, 122 (1989) (holding that Fed. R. Civ. P. 11 permits sanctions only against individuals, not law firms), then any decision in this case surely ought to take into account Rule 11(a)'s language

about unsigned papers "being called to the attention of the attorney or party" so that the lack of a signature can be "corrected promptly." Fed. R. Civ. P. 11(a). The very sentence in that rule that allows a court to strike an unsigned pleading includes that reference to prompt correction of those documents. By acting on the "shall be stricken" language in Rule 11(a) and ignoring the rest of the sentence, the court below did not give the rule its plain-meaning reading, and did not hold true to the "just" objectives that the rules presumably are designed to further. Fed. R. Civ. P. 1.

The view that an appellant should be given an opportunity to fix an unsigned notice finds support not only in Rule 11(a) itself, in that rule's 1993 Advisory Committee Notes, and in decisions from Rule 11's early days, but also in the text of other parts of Rule 11, for the sanctions that are the heart and soul of that rule may be imposed by a court only after the party or attorney facing those sanctions is afforded "notice and a reasonable opportunity to respond." Fed. R. Civ. P. 11(c). Are we to believe that Rule 11 affords those procedural protections to a party or attorney who has raised dilatory or frivolous claims in a legal document, while that same rule contemplates imposition of the ultimate penalty – dismissal of a case – with no warning at all (and for a matter so trivial as the omission of a signature)? That cannot have been the intent of the rule's drafters – indeed we know it was not, in light of the Advisory Committee Notes – and it surely is not an approach supported by the text of the rule itself.

In the end, the dismissal ordered in this case simply was not compelled by Rule 11, for nothing in that rule suggests that the federal courts are to play "gotcha" when a lawyer or a *pro se* party files an unsigned notice of appeal. Though Becker did fail to comply with Rule 11's signature requirement, the court of appeals likewise failed to comply with its own duty under that rule to give Becker an

opportunity for correcting the omission. He deserves that opportunity still.

C. Only Rule 11 Imposes A Signature Requirement For Notices Of Appeal, And It Does So Only In Some Civil Cases.

Though Rule 11's signature requirement does apply to notices of appeal – because those notices are of course filed "with the district clerk," Fed. R. App. P. 3(a)(1), just as are all other documents to which Rule 11 applies – that rule applies only to civil cases. *See* Fed. R. Civ. P. 1 (noting that the civil rules apply only to "suits of a civil nature," and only in the "United States district courts"); *Willy v. Coastal Corp.*, 503 U.S. 131, 135 (1992) ("the Rules, including Rule 11, apply to all district court civil proceedings"). While this is of course a civil case, and therefore we acknowledge that Rule 11 applied to any district-court filings by either party, the view of the court of appeals below that *all* notices of appeal must be signed is surely wrong.

Certainly neither Rule 11 nor any other rule compels the appellant to sign the notice of appeal in federal *criminal* cases. In those cases, the clerk of the district court "must immediately prepare and file a notice of appeal on behalf of the defendant" if he or she "so requests," Fed. R. Crim. P. 32(c)(5), and that rule makes no mention at all of a signature requirement for such a filing. In fact, the only signature requirement in the federal criminal rules appears in Fed. R. Crim. P. 7(c)(1), which directs the prosecutor to sign the indictment or bill of information in each criminal case.

Indeed, even many of the civil cases that come before the courts of appeals are not governed by Rule 11, for many of those civil cases come not from the district courts but from various federal agencies. Appeals in those cases are initiated by the filing of a "petition for review" as described in Fed. R.

App. P. 15(a), and neither that rule nor any other directs the appellant to sign the petition when seeking appellate review of an agency order.

And the federal appellate rules as a whole impose no signature requirement in either civil or criminal cases. To be sure, the appellate rules indicate that "[a] pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise." Fed. R. App. P. 3(c)(2). But that language – which, according to the Advisory Committee Notes accompanying Rule 3's 1993 amendments, was "intended to reduce the amount of satellite litigation spawned by" the Court's decision in *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988) (holding that each appellant must be specified in the notice itself) – does not come close to directing all parties or lawyers to sign notices of appeal. In addition, Rule 3 does not even mention signatures in its list of those features that a notice of appeal "must" contain. *See* Fed. R. App. P. 3(c)(1) (directing the appellant to (a) specify all parties who intend to appeal, (b) designate the judgment being appealed, and (c) name the court to which the appeal is taken).

Other parts of Appellate Rule 3 also suggest that a party's failure to sign the notice of appeal should not result in the automatic dismissal of the case:

> An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

***

> An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

Fed. R. App. P. 3(a)(2) & (c)(4).

In the end then, only Rule 11 directs that district-court documents – including, presumably, notices of appeal – be signed, and that rule applies only to civil cases. Even apart from the appellate court's failure in this case to afford petitioner Becker the opportunity for correction that the text of Rule 11(a) contemplates, then, the approach of the court below – treating the lack of a signature on the notice of appeal as a "jurisdiction[al] . . . defect[]," J.A. 16 – seems odd indeed where that rule applies only to civil cases (and not even to all of *those*, given that much federal civil litigation originates not in the district courts but in administrative agencies).

Surely the better approach – one consistent with both the text of Rule 11 and Appellate Rule 3, as well as with the longstanding principle that court rules cannot extend or lessen the jurisdiction of the federal courts, see *Sibbach v. Wilson & Co.*, 312 U.S. 1, 10 (1941) – is to view the signature on a notice of appeal in civil cases not as a must-have element like those features of the notice listed in Fed. R. App. P. 3(c)(1), but rather as a helpful device for showing that the losing party in the district court does indeed wish to appeal, and as an affirmative representation to the court from the appellant that the notice "is not being presented for any improper purpose, such as . . . [a] needless increase in the cost of litigation." Fed. R. Civ. P. 11(b)(1). The district court and court of appeals are entitled by Rule 11 to demand such a signature in any civil case coming from the district court, but no court should automatically dismiss the case simply because the notice is unsigned.

Just as American courts have always accepted unsigned documents for filing in civil cases, and have – consistent first with custom and now with the text of Rule 11(a) itself – provided parties and lawyers an opportunity to add a signature when court rules have called for one, so the federal rules today contain no jurisdictional requirement that notices of appeal be signed. While notices of appeal in civil district-court cases apparently should indeed be signed, the court below surely erred when it said that a federal court "lacks jurisdiction over" an appeal when the notice of appeal is unsigned. J.A. 16. Nothing in that rule – or any other – indicates that a missing signature on a timely notice automatically divests an appellate court of jurisdiction when that notice contains all of the elements that Appellate Rule 3(c)(1) demands.

II. Federal Courts Can And Should Seek Clarification From The Appellant(s) When An Unsigned Notice Of Appeal Creates Confusion.

To be sure, several courts have had to resolve the confusion caused when parties whose names or signatures did not appear on the notice of appeal later claimed that they actually intended to appeal, and other courts have likewise addressed the similar confusion caused when the names of signers and non-signers alike were typed on a single notice of appeal. See, e.g., *Ruiz Rivera v. Riley*, 209 F.3d 24, 27 (1st Cir. 2000) (where notice of appeal was signed by only one of several *pro se* individuals, the notice was valid only as to the individual who had signed the notice); *Covington v. Allsbrook*, 636 F.2d 63, 64 (4th Cir. 1980) (reaching the same conclusion, and explaining that the "only means of determining which litigants are interested in pursuing an appeal is by requiring each *pro se* party to personally sign the notice of appeal"), *cert. denied*, 451 U.S. 914 (1981); *Mikeska v. Collins*, 928 F.2d 126 (5th Cir. 1991) (same result); *Scarrella v. Midwest Federal Sav. and Loan*, 536

F.2d 1207, 1209 (8th Cir. 1976) (where notice of appeal was signed by only one of several *pro se* individuals, the notice was valid only as to the individual who had signed the notice), *cert. denied*, 429 U.S. 885 (1976); *Elias v. Connett*, 908 F.2d 521, 522 n.1 (9th Cir. 1990) (in a case decided before the current Fed. R. App. P. 3(c)(2) took effect, a notice of appeal signed by a *pro se* party did not perfect an appeal for his *pro se* wife also).

The understandable concerns of appellate courts in cases like those can be remedied easily enough, though. If a district court or a circuit court of appeals cannot determine – because of missing signatures (as in this case) or because of a mismatch between typed names and signatures – which of one or more district-court losers actually intend to appeal when a timely notice of appeal is filed, surely the court's clerk can direct the purported appellant or appellants to show cause why the appeal should not be dismissed as to some or all of them, just as federal district courts can direct parties to show cause why sanctions should not be imposed for violations of Rule 11(b). Fed. R. Civ. P. 11(c)(1)(B). If the appellants then fail to correct the missing signatures or fail to otherwise resolve the court's – or the appellees' – concerns, then the court is free to act as the court of appeals did in this case.

That very approach is the one followed by this Court, where Supreme Court Rule 14.5 permits the Clerk to return to the petitioner for correction any timely-but-in-some-way-deficient petition for certiorari. As long as the petitioner then returns a corrected petition within 60 days, the petition is docketed and treated as timely.

Under Fed. R. App. P. 4(a)(5)(A), the district court may extend the time for filing a notice of appeal where a party "shows excusable neglect or good cause" supporting the need for additional time. While Fed. R. Civ. P. 11(a)'s

language giving federal courts the authority to seek prompt correction of unsigned documents should be enough for those courts to call for – and then wait for – those prompt corrections when needed, the time-extension language in Appellate Rule 4 further underscores a district court's authority to extend the filing window for notices of appeal that initially arrive without the necessary signatures. And of course the federal courts enjoy "[c]ertain implied powers" that are "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (citations and quotations omitted). If a court needs clarification about an appellant's unsigned notice of appeal, surely it can demand exactly that.

No prejudice inures to the appellee while the district court or the court of appeals clarifies whether a non-signing appellant like Becker – or any other losing party in the district court – intends to appeal. Presumably, the appellee has prevailed in the trial court in most cases, and if – through carelessness or ignorance or for some other reason – the appellant or appellants slow down the appeal by omitting a signature on the notice of appeal, no harm falls on the appellee, who typically has no interest in fast-tracking appellate review of a district-court judgment in his favor.

As Becker no doubt would have done, any appellant who in good faith wants prompt review of an adverse trial-court judgment will respond promptly to a show-cause order from the district court or court of appeals seeking clarification of an unsigned notice of appeal. Surely federal courts have the inherent power to seek that kind of clarification to resolve any doubts about which parties are or are not seeking appellate review. That is just what should have happened here, assuming that the district court or the

court of appeals had any doubts about the genuineness of Becker's unsigned notice of appeal.

III. Petitioner Becker's Appeal Should Not Have Been Dismissed.

A. An Automatic-Dismissal Rule For Unsigned Notices Of Appeal Does Not Advance The Interests Underlying Rule 11.

The very text of Rule 11 shows that the signature requirement it prescribes is but a means to the end of encouraging litigants to file legal documents well grounded in both law and fact. And the "purpose of requiring [in Rule 11(a)] unrepresented parties to sign their pleadings . . . was to make certain that those named as parties in an action in which there was no lawyer actually had assented to the filing of the action on their behalf." *Gonzales v. Wyatt*, 157 F.3d 1016, 1021 (5th Cir. 1998) (quoting 5A Wright & Miller, Federal Practice and Procedure: Civil 2d § 1334 at 54-55). By treating the Rule's signature requirement as an end in itself, without regard to the reasons behind it, the court of appeals surely lost sight of the "good ground" rationale that Justice Story and later commentators and rule writers have viewed as the rightful basis for the requirement itself.

Certainly we acknowledge the concerns voiced by the court below in an earlier case: "An unsigned notice of appeal could be nothing more than opportunistic behavior by the purported appellant in order to gain more time to consider whether or not the party really wants to appeal." *Mattingly v. Farmers State Bank*, 153 F.3d 336, 337 (6th Cir. 1998). The same could be said of the many defective petitions for certiorari that arrive at this Court's doorstep every week, though, many of which the Clerk's office nonetheless dutifully returns to the petitioners with directions for correcting and resubmitting again within 60 days. In the end,

no court can divine the good or ill motives of those who file unsigned notices of appeal or other similarly-defective documents in our federal courts. But "the notice afforded by a document, not the litigant's motivation in filing it, determines the document's sufficiency as a notice of appeal," *Smith v. Barry*, 502 U.S. 244, 248 (1992), and as the 1993 Advisory Committee Notes to Rule 11 say, that rule "establishes an objective standard" for legal filings, not one that turns on the actual motives of the attorney or party. See also Advisory Committee Notes to Fed. R. App. P. 3(c) (1993) ("If a court determines it is objectively clear that a party intended to appeal, there are neither administrative concerns nor fairness concerns that should prevent the appeal from going forward.").

The Court explained ten years ago that "Rule 11 is aimed at curbing abuses of the judicial system," *Business Guides, Inc. v. Chromatic Communications Enter.*, 498 U.S. 533, 542 (1991) (citation and quotations omitted). See also *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990) ("the central purpose of Rule 11 is to deter baseless filings in district court"). Yet the no-second-chances approach of the court of appeals in this case targets the abusive, the ignorant and the careless alike. If a signature is as important for curbing abuses as Rule 11 suggests, no less important is the rule writers' apparent view that only the abusive litigator will fail to "correct[] promptly" the lack of a signature once it is "called to the attention of the attorney or party." Fed. R. Civ. P. 11(a). Only if those quoted words are honored will the rule's signature requirement home in on the kinds of abuses that it should.

B. The Federal Rules Are Designed To Facilitate Decisions On The Merits Of Legal Claims, Not Set Traps For Unwary Litigants.

Any other reading of Rule 11 would run counter to the general spirit of the federal rules of civil and appellate procedure, which "reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and [which instead] accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Foman v. Davis*, 371 U.S. 178, 181-82 (1962) (citation and quotations omitted). See also *Surowitz v. Hilton Hotels Corp.*, 383 U.S. 363, 373 (1966) ("The basic purpose of the Federal Rules is to administer justice through fair trials, not through summary dismissals as necessary as they may be on occasion.").

The very first rule of civil procedure explains that the federal rules – including, obviously, Rule 11 – are supposed to be "construed and administered to secure the just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1. Rule 11 surely is not included in the rules just to give federal courts an easy way out as soon as a careless lawyer or an ignorant party omits a signature on a key document. As the Court said 35 years ago, "[t]hese rules were designed in large part to get away from some of the old procedural booby traps which common-law pleaders could set to prevent unsophisticated litigants from ever having their day in court." *Surowitz*, 383 U.S. at 373. As lower courts have said, "it would . . . be a harking back to the formalistic rigorism of an earlier and outmoded time . . . to hold that the extremely simple procedure required by the rules is itself a kind of Mumbo Jumbo, and that the failure to comply formalistically with them defeats substantial rights." *Alley v. Dodge Hotel*, 501 F.2d 880, 884 (D.C. Cir. 1974) (quoting *Crump v. Hill*, 104 F.2d 36, 38 (5th Cir. 1939)).

This Court's decisions point to the built-in flexibility of the federal rules when a party's intentions – particularly a *pro se* party's intentions – are clear. See *Smith*, 502 U.S. at 245 (holding that "a document intended to serve as an appellate brief may qualify as the notice of appeal required by Rule 3"); *id.* at 248-49 ("If a document filed within the time specified by Rule 4 gives the notice required by Rule 3, it is effective as a notice of appeal."); *FirsTier Mortg. Co. v. Investors Mortg. Ins. Co.*, 498 U.S. 269 (1991) (holding that a district court's non-final bench ruling was a "decision" from which a notice of appeal could be filed, even if the court had not yet entered final judgment); *Torres*, 487 U.S. at 316-17 (explaining that "if a litigant files papers in a fashion that is technically at variance with the letter of a procedural rule, a court may nonetheless find that the litigant has complied with the rule if the litigant's action is the functional equivalent of what the rule requires," but holding that the court of appeals did not have jurisdiction over one particular appellant's appeal where his name had been inadvertently omitted from the notice of appeal filed by his 15 co-appellants); *Foman*, 371 U.S. at 181 (holding that because the appellant's "intention . . . was manifest," and because the "defect in the second notice of appeal did not mislead or prejudice the respondent," the court of appeals had improperly dismissed an appeal where the notice of appeal failed to specify all of the orders that the appellant intended to challenge in the appeal); *Lemke v. United States*, 346 U.S. 325, 326 (1953) (per curiam) (where appellant mistakenly filed his notice of appeal after the district court had announced its judgment, but before that court had actually filed a final judgment entry, the notice of appeal "gave full notice . . . of the sentence and judgment which petitioner challenged," and the court of appeals had therefore erred when it dismissed the appeal as premature).

Just as "[p]roper briefing is not . . . a jurisdictional requirement under the Federal Rules of Appellate Procedure," *Smith*, 502 U.S. at 249 – even though Fed. R. App. P. 28 spells out detailed requirements for acceptable appellate briefs – so the signature requirement in Rule 11 is not a jurisdictional must-have on the notice of appeal. That rule, like all of the federal rules, is designed to facilitate the presentation of well-grounded legal arguments and factual claims so that parties can receive decisions from the courts on the merits of those claims. If the notice of appeal adequately apprises the other parties and the courts about the appellant's intent to appeal, it has served its purpose in pushing the case along the road toward a decision on the merits in the court of appeals. That is its function, and the idea that the omission of a signature on the notice opens a surprise trap door beneath the appellant – suddenly and irretrievably bringing his case to a screeching halt – seems entirely at odds with the wording of Rule 11 and with the federal rules generally.

C. Petitioner Becker Is Entitled To A Decision On The Merits Of His Appellate Claims, Even If Those Claims In The End Have No Merit.

In this case, we certainly viewed the unsigned notice of appeal as adequate notice of petitioner Becker's intent to appeal, and, at least for several months, the court of appeals apparently felt the same, directing Becker to file his appellate brief and accepting it from him when he did so. Had the court below harbored any doubts about Becker's intentions or his identity, it could have sought the very corrections that Fed. R. Civ. P. 11(a) contemplates. And certainly we respondents could have objected to the lack of a signature on the notice of appeal as well. We did not do so, and fully expected the court of appeals to address Becker's appellate arguments on the merits. Certainly nothing about the

absence of a signature was prejudicial to our interests, and that is no less true now than when Becker filed the unsigned notice in 1999.

Even if we had any doubts about Becker's intentions, "any doubts as to . . . [his] intent to appeal . . . are resolved by . . . [his] opening brief[]." *New York Life Ins. Co. v. Deshotel*, 142 F.3d 873, 884 (5th Cir. 1998) (holding that a "mistake in designating orders to be appealed does not bar review if the intent to appeal a particular judgment can be fairly inferred and if the appellee is not prejudiced or misled by the mistake"). The court of appeals in this case docketed Becker's appeal on October 1, 1999, and directed him to file a signed appellant's brief by November 24, 1999. Becker in fact filed such a brief – which he signed both on the cover and on the last page – on November 8, 1999, and no one could then doubt his intent to appeal, or question his willingness to comply with court rules and deadlines. And likewise, even earlier – on October 18, 1999 – Becker filed in the district court a signed request for pauper status during his pending appeal, again showing that his intentions were genuine and that the person who had signed the original complaint was now actively pursuing the appeal.

In dismissing Becker's case, the court of appeals reached the right result, in our view, for his claim alleging wrongdoing by various state officials is surely without merit, just as the district court found. But the court of appeals did the right thing for the wrong reason, because Becker was and is entitled to his day in court on his written appellate claims, and the court of appeals should have affirmed the district court's dismissal only after addressing the merits of Becker's appeal. Because Becker timely appealed the district court's dismissal of his case, and then briefed his claims on the merits in the court of appeals in the way and within the time limits set by that court for him – right down to the filing of a timely "[s]igned" appellate brief as the court of appeals

directed, J.A. 14 – he had every right to expect that the court of appeals would hear his case.

Petitioner Becker may well be a cantankerous litigant whose legal claims are worth little more than the paper on which they are typed, but he has done – and done on time – everything that any court below has directed him to do. We have no reason to think that he would not have corrected his unsigned notice of appeal promptly had the court of appeals given him an opportunity to do so (and he in fact did exactly that in his timely motion for reconsideration, once the court of appeals told him about the significance of the missing signature).

According to the text of Rule 11, Becker was entitled to correct his unsigned notice of appeal. The history of that rule and the purposes behind it, together with the tenor of the federal rules in general and the particular procedural history of this case, all point toward a single outcome here. Petitioner Becker is entitled to his day in court on his appellate claims.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed, and the case remanded for further proceedings there.

Respectfully submitted,

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APPENDIX

Rule 1 of the Federal Rules of Civil Procedure provides as follows:

Rule 1. Scope and Purpose of Rules

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

Rule 11 of the Federal Rules of Civil Procedure provides as follows:

Rule 11. Signing Of Pleadings, Motions, And Other Papers; Representations To Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the

person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, –

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) *How Initiated.*

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim,

defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) *Nature of Sanction; Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

Rule 3 of the Federal Rules of Appellate Procedure provides as follows:

Rule 3. Appeal as of Right – How Taken

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.

(4) An appeal by permission under 28 U.S.C. § 1292(b) or an appeal in a bankruptcy case may be taken only in the manner prescribed by Rules 5 and 6, respectively.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(5) Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) Serving the Notice of Appeal.

(1) The district clerk must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record – excluding the appellant's – or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries – and any later docket entries – to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

(2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4(c), the district clerk must also note the date when the clerk docketed the notice.

(3) The district clerk's failure to serve notice does not affect the validity of the appeal. The clerk must note on the docket the names of the parties to whom the clerk mails copies, with the date of mailing. Service is sufficient despite the death of a party or the party's counsel.

(e) Payment of Fees. Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals.

Rule 4 of the Federal Rules of Appellate Procedure provides as follows:

Rule 4. Appeal as of Right – When Taken

(a) Appeal in a Civil Case.

(1) *Time for Filing a Notice of Appeal.*

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry.

(3) *Multiple Appeals.* If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days (computed using Federal Rule of Civil Procedure 6(a)) after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment – but before it disposes of any motion listed in Rule 4(a)(4)(A) – the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal – in compliance with Rule 3(c) – within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) *Motion for Extension of Time.*

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.

(6) *Reopening the Time to File an Appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry; and

(C) the court finds that no party would be prejudiced.

(7) *Entry Defined.* A judgment or order is entered for purposes of this Rule 4(a) when it is entered in compliance with Rules 58 and 79(a) of the Federal Rules of Civil Procedure.

(b) Appeal in a Criminal Case.

(1) *Time for Filing a Notice of Appeal.*

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 10 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision, sentence, or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry.

(3) *Effect of a Motion on a Notice of Appeal.*

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 10 days after the entry of the order disposing of the last such remaining motion, or within 10 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 10 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order – but before it disposes of any of the motions referred to in Rule 4(b)(3)(A) – becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective – without amendment – to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) *Motion for Extension of Time.* Upon a finding of excusable neglect or good cause, the district court may – before or after the time has expired, with or without motion and notice – extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) *Jurisdiction.* The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(c), nor does the filing of a motion under 35(c) affect the validity of a notice of appeal filed before entry of the order disposing of the motion.

(6) *Entry Defined.* A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) Mistaken Filing in the Court of Appeals. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.